

Conyers, Nadler Question Attorney General on Prejudging Terror Probes

Thursday, 04 December 2008

WASHINGTON, DC-- Today, House Judiciary Committee Chairman John Conyers, Jr. (D-MI) and Constitution, Civil Rights, and Civil Liberties Subcommittee Chairman Jerrold Nadler (D-NY) wrote Attorney General Michael Mukasey seeking information about the basis for Mr. Mukasey's recent assertion that the Administration officials who signed off on torture and surveillance policies believed that their actions were lawful. The Members pointed out that this assertion was difficult to square with the record showing there were significant internal objections to the legal approval of these policies and was also premature in light of the numerous investigations underway looking at these very issues, including investigations by the Department's own internal watchdogs.

The text of the letter is below.

Dear Mr. Attorney General:

We read with interest your statements to the press yesterday that "[t]here is absolutely no evidence that anybody who rendered a legal opinion either with respect to surveillance or with respect to interrogation policy did so for any reason other than to protect the security of the country and in the belief that he or she was doing something lawful,"

While this statement may well be true regarding many of those in the Department of Justice and the Administration's broader national security apparatus who approved counterterrorism policies and methods, we are troubled by the breadth of your statement and the blanket conclusion that everyone involved in approving these policies believed they were acting within the law. The public record reflects ample warning to Administration officials that its legal approach was overreaching and invalid, such as repeated objections by military lawyers to Department legal opinions on interrogation issues and the stark warning by then-Deputy Attorney General Comey that the Department would be "ashamed" if the world learned of the legal advice it had given on torture issues. Indeed, FBI interrogators were so troubled by some approved interrogation methods that they refused to participate, as the Department's own Inspector General has described. Looked at another way, is it your view that the CIA attorney who reportedly told Guantanamo interrogators that Department legal guidance boiled down to "If the detainee dies, you're doing it wrong" or the Department lawyers who advised him "justifiably believed that approach comported with the law?"

The much-discussed effort by then White House counsel Alberto Gonzales and others to circumvent Mr. Comey's authority as Acting Attorney General by confronting John Ashcroft in his hospital bed also indicates serious ethical and legal disagreement within the Department and the Administration on these matters, and leaves room for an ultimate conclusion that some individuals may well have understood that they were circumventing legal or ethical requirements. One Inspector General report has already found that former Attorney General Gonzales mishandled classified documents regarding NSA surveillance programs, and serious questions about that matter remain unanswered and reportedly under investigation.

Our greatest concern, however, is that your statement appears to be pre-judging numerous ongoing investigations. As you know, a Congressionally-mandated review of the NSA's warrantless surveillance program is currently underway by the Inspectors General of agencies involved, including the Department of Justice. In addition, the Department's Office of Professional Responsibility is reportedly probing "whether the DOJ attorneys who were involved [in approving NSA surveillance programs] complied with their ethical obligations of providing competent legal advice to their client and of adhering to their duty of candor to the court." Other reports suggest the existence of other relevant inquiries.

Accordingly, please explain the basis for your blanket conclusion that all Department actors believed their conduct in counterterrorism matters was lawful. If relevant Department probes – or other secret inquiries such as the widely-reported but never published 2004 Special Review by the CIA Inspector General – have been completed and provide the basis for your statement, please state when they have been completed and describe their conclusions and any action you have taken in response. To the extent such reports are classified, we are willing to make arrangements to receive this information in an appropriate fashion. If, on further reflection, you believe that your statement was in any part premature or overly broad, please so indicate.

Thank you very much for your attention to this matter. Please direct your response to the Judiciary Committee office at 2138 Rayburn House Office Building no later than Friday, December 12, 2008.

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